

FACTFINDING PROCEEDINGS UNDER
CALIFORNIA GOVERNMENT CODE SECTIONS 3548.2 AND 3548.3

In the Matter of a Dispute

Between
HARTNELL COMMUNITY COLLEGE
DISTRICT

And
HARTNELL FACULTY ASSOCIATION

FACTFINDING PANEL'S
REPORT AND RECOMMENDATIONS

PERB NO. SF-IM-2624-E

Fact finding Panel

JOE H. HENDERSON, Impartial Fact finding Chair
MICHAEL E. HILL District Appointed Fact finder
ALAN J. FREY, Association Appointed Fact finder

Hearing

May 22, 2006

Appearances of Panel Members

For the District: William E. Brown, Attorney at Law
777 Marshall St.
Redwood City, CA 94063

For the Association: Alan J. Frey
Labor Relations Representative
California Association of Teachers
5959 Greenback Lane, Suite 430
Citrus Heights, California 95621

INTRODUCTION

In, the Hartnell College Faculty Association ("union" or "Association") and the Hartnell Community College District ("District" or "Employer") entered into a three-year Collective Bargaining Agreement ("CBA") to remain in effect until June 30, 2004. Starting September of 2004, the parties met and conferred in an effort to reach agreement on a successor agreement, after about 17 bargaining sessions and 3 mediation sessions with a mediator from the State Mediation and Conciliation Service (CSMCS), were ultimately unable to reach such an agreement on a number of issues. This Fact finding arises out of that impasse.

Joe H. Henderson was chosen by the parties to serve as Impartial Chair of the Fact finding Panel. Michael E. Hill, was appointed by the Employer. The union appointed Alan J. Frey, Labor Relations Representative of the California Association of Teachers, AFL-CIO.

Both parties had previously waived, in writing, all of the time limits and deadlines set forth in Cal. Govt. Code Sections 3548.2 and 3548.3. The hearing was held at the District administration office in Salinas on May 22, 2006, and the parties were afforded full opportunity to introduce documents and exhibits, to call and cross-examine witnesses, and to present arguments. At the conclusion of the evidentiary hearing, the parties waived oral arguments, elected to submit written briefs, and thereafter submitted extensive arguments in support of their respective positions.

The Fact finding Panel met in executive session on May 22, 2006, and communicated by email several times.

ISSUES

The following issues were submitted to the Panel for review and recommendation:

Districts Ability to pay.

- A) Salary
- B) District contribution to health benefit premiums

C) Contract Duration (*The dispute, this fact-finding is originally over the 04-05 academic year but the Association believes that a multi-year contract is necessary at this time.*)

The remaining unresolved issues are:

- A) Salary Schedule 2004 - 2005
- B) Salary Schedule 2005 - 2006
- C) Salary Schedule 2006 - 2007
- D) Miscellaneous Salaries, Regular/Contract Faculty - Summer Session and overload
- E) Salaries for Part-Time Faculty
- F) Article 6 — Health and Welfare Benefits:
 - Medical, Dental and Vision
 - Retiree coverage
- G) Workload
 - Health Education, Physical Education and Recreation (H.P.E.R)
 - Athletic Trainers & Part time Assistants
 - Head Coach, Assistant Coach Positional Coach Stipends
- H) Counselors - Hours & Teaching assignments
- I) Distance Learning
- J) Faculty Preparation, Course Development, On-Line Courses and Copyright Ownership

STATUTORY CRITERIA

Gov. Code Sec. 3548.2(b) mandates that the Panel consider and apply the following criteria in making its findings and recommendations:

- (1) State and federal laws that are applicable to the employer.
- (2) Stipulations of the parties.

(3) The interest and welfare of the public and the financial ability of the public school employer.

(4) Comparison of the wages, hours, and conditions of employment of the employees involved in the Fact finding proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally in public school employment in comparable communities.

(5) The consumer price index for goods and services, commonly known as the cost of living.

(6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits; the continuity and stability of employment; and other benefits received.

(7) Any other facts not confined to those specified in paragraph (1) to (6), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

BACKGROUND

The District is located in Monterey, County and operates satellite campuses, in other locations and Full-time faculty of the District work 177 days a year and receive employer-paid insurance benefits including health, dental and vision, with a total annual cost to the District of approximately \$860 per teacher. Starting salaries are \$42,395, with a top salary of \$81,101. The District currently employs 115 full time teaching faculty.

CONTENTIONS OF THE PARTIES

THE DISTRICT

The District has offered a proposal which it states should meet the needs of both parties:

1. A 3% increase effective August 13, 2004.

2. NIC lecturer hourly increase to \$56.81
3. NIC Lab, counselors, & Librarians to \$52.26 per hour.
4. Part time Lecturer to \$51.25 per hour
5. Part time Lab, Counselor & Librarian 42.50 per hour
6. Medical, dental and vision coverage \$1,000

DISTRICTS ABILITY TO PAY

(The District submitted substantial quotes from the Fiscal Crisis and Management Team (HCFA) presentation which was dated after the fact-finding Hearing. The Chair excluded these comments as not having been presented at the hearing which would not have given the Association an opportunity to submit their comments on the HCFA report.)

The District asserts that they are not capable financially of paying the \$335,538 in increase costs over their offer to meet the demands of the Faculty Association; \$43,800 for the increase costs of Benefit, \$196,561 for the increase in salaries and the required contributions and added costs.

POSITION OF THE HARTNELL COMMUNITY COLLEGE DISTRICT

AT FACT FINDING

PERB Case No. SF-IM-2624 E

At the hearing at the time and place above referenced, the College District Representatives asserted that the College District did not have the ability to pay the wage and benefit increases demanded in bargaining by the Hartnell College Faculty Association. The position of the District is, in a classic sense, an "inability to bear the brunt of the wage increase requested by the Union".¹ One of the factors queried in Robert's treatise is:

"Does the company's ability to pay depend on future developments which it is difficult

¹ Roberts' Dictionary of Industrial Relations, Harold S. Roberts, Revised Edition, 1971, Bureau of National Affairs, Inc., Washington, D.C.

to assess at the time negotiations are taking place?"²

This question and consideration is especially pertinent in dealing with public agencies dependent on state monies for operating costs. The uncertainty inherent in schools' and colleges' ability to pay is multi-faceted, and are related to, but not limited to:

- The level of revenues available from the state:
 1. Public school finance is based on estimates of state income and sales taxes and other revenues that the state receives. In response to this, the System Office (The California Community Colleges Chancellor's Office) deficit funds the workload measures upon which the funding formula is based. These workload measures are: credit FTES, non-credit FTES, new headcount, continuing headcount, gross square footage of authorized buildings, FTES generated in leased space and an overhead element. The System Office may begin the year by funding a percentage of the amount of each of these elements that each college has. That percentage may increase or decrease several times as the year progresses. Therefore, the System Office may fund 85% at the beginning of the year, 90% at another point 95% at another point and 98% at another. The percentage can go up, down or both throughout the year.
 2. If county property taxes aren't collected as predicted by the Legislative Analyst's Office, the calculated revenue for all districts is reduced. It doesn't matter if collections are low or as predicted in a given district, all districts are reduced alike (as a percentage). Again, this is a moving target and can go up or down several times during the year. However, if additional taxes are collected, the districts are not allowed to keep them. Each district's funding is capped at the amount calculated in the Program Based Funding Model. In other words, a district's revenue can go down from the state reducing either the workload measures or from low collection of property taxes, but it can't rise above the capped amount.
- The level of attendance upon which funding is based:
 1. Revenue may be reduced whether or not workload measures are achieved (whether or not the district grows) as in the first bullet above. Those deficits are levied on a statewide basis. In addition, if a specific district doesn't maintain the prior year level of all of the workloads enumerated in the first bullet, it is said to be in decline. There are many reasons for decline. The System Office has proven that for every \$1 of increase in the student enrollment fee there is a corresponding decrease in enrollment. Likewise, when the economy thrives, students leave school for work, especially low

² Loc. cit. par. 1, Line 20, p.2 Exhibit "A"

income students. Hartnell's student body is 56% Latin, many of which are first in their family college students.

2. At the end of the 2004-05 fiscal year, there were 10 districts in decline. As of P-1 of 2005-06 the number had risen to 24, by P-2 the number has climbed to 35, or approximately half of the 72 districts. Many districts are currently in trouble and the decisions that are made in this fiscal year will determine whether or not they will continue to be viable entities for the students.
- Prior years' fiscal status, borrowing and payback:
 1. The current administration has been trying to raise salaries and benefits in relation to like districts since it was installed in 1995-96. In many ways it has been successful. Looking at other districts in the HCFA presentation, none match the health and welfare plan offered by Hartnell.
 2. In the 1995-96 year the District went through the negotiations process with the respective unions. Even though the District felt that the contracts it negotiated were fair, it wasn't able to pay for them and maintain the fund balance required by the Board. The same happened in the two ensuing years. Then the District had five years of phenomenal growth. The District not only grew out of the hole created by borrowing, but grew to an all time high FTES base. During this growth period, the District tried to advance its employees by granting a total reclassification to all of its classified personnel except managers. This resulted in an additional increase of 8.3% across three years. In the 1998-99 year certificated employees except managers received an additional 3.9% increase. Management is the only class that has never received anything additional. In every other instance, all employees have received the same salary increases. The same can be said for the 2004-05 year. All classes of personnel were offered the same package. Every group took it except faculty. Since the current administration has been in place, no employee group has ever been hurt by being laid off or by not receiving a raise in excess of COLA.
 3. The last two years have been exceptional through-out the state as noted above. Two years of large decline made it impossible to repay the borrowing as in prior years. Thus, \$1.6 million was taken from the district in the current year. Giving the faculty the amount they seek which is in excess of the District's offer would mean a current year payout of an additional \$1 million dollars and another \$1 million for the "me too" clauses in the other units contracts. This additional \$2 million, which is not in the FCMAT (Fiscal Crisis and Management Team) Report, will cause bankruptcy in the 2006-07 year.

The panel is urged to consider the above factors in their deliberations and formulations of a recommendation or recommendations for settlement of the impasse herein. A close examination of the documents submitted on behalf of the District at the fact finding hearing is also recommended to the panel, especially Exhibit "C" which demonstrates the dramatic fund balance decline over the last two fiscal years (2004-05 and 2005-06).

Conclusion

It is submitted that the District has amply demonstrated evidence that it lacks the ability to pay the increases demanded by the Hartnell College Faculty Association, and requests a recommendation in concert with the District's last, best offer.

THE HARTNELL FACULTY ASSOCIATION:

District Ability to pay-

The Association is resolute in its belief that the district **does not** have an ability to pay concern.

In labor relations a claim that an employer cannot find the resources to pay the demands of the union is a time honored tenet in bargaining designed by management to deny reasonable demands of the union. The "ability to pay" claim casts the district as having to defend the claim as opposed to the union having to refute it.

Hartnell has claimed an inability to pay based on speculation, a concept completely disavowed by practitioners in the field. The Hartnell District argues that paying the demands of the Association, an amount mutually agreed to of \$335,000 is well within the districts financial capabilities and would not have any long term adverse consequence.

It is clear that the district began the current year with a beginning balance of nearly five million dollars or 12% of expenditures well beyond what the state chancellors office recommends of between three and five percent.

Additionally, the district in the past year transferred an amount of \$993,000 from the general fund to their self insurance fund. This transfer was not required and in fact was completely discretionary on behalf of the district. No state or federal requirement for this transfer was claimed by the district (as none could be) and it appears that this maneuver was simply designed to take nearly a million dollars off the already excessive beginning balance. Had this amount remained in the general fund the beginning balance would have been \$5,921,723 or 14.7 percent of expenditures. Granting the full faculty demands would amount to only 5.6% of the districts beginning balance and a mere 8/10ths of one percent of the districts total budget.

The district as evidenced by budget history provided by the Association produces budgets (CCSF 311's) that are totally unreliable in predicting income and expenditures. The impact of the districts budgeting practice makes it nearly impossible to negotiate in good faith with the faculty. The districts continual lament that they are broke and cannot afford to remunerate the faculty with respectable wages is longstanding.

Nothing could be farther from the truth. The districts smokescreen on finances should be exposed for what it is and the ability to pay stance completely refuted.

Comparability findings show the faculty to be at the bottom or last in almost every category.

The faculty at Hartnell claim that they have been at the bottom of all rankings when it comes to salary and fringe benefits either in local comparisons or statewide rankings.

The parties have agreed in previous negotiations as well as the current round that the primary districts used for comparative purposes shall be the "Central 14" a group of districts essentially in the middle of the state. For negotiations purposes these district would comprise the market basket for new faculty recruitment as well as retention of current employees.

In the comparisons presented by the Association and unchallenged by the district the following statistics were presented.

SALARY RANKING HARTNELL COMPARED TO CENTRAL 14 AND STATE 72

SALARY STEP	CENTRAL 14 RANK	STATE RANK 72 TOTAL
MASTERS @ STEP ONE	12	58
NON DR. @STEP 10	13	58
NON DR. MAXIMUM	10	48
NON DR. MAX & LONG.	14	67
HIGHEST EARNABLE	14	65

In addition to the statistics presented above the proposals by both the district and the association do little to move the faculty in any salary category to even the middle of the Central 14 and in the Non Doctorate maximum with longevity and the highest earnable salary the rankings stay at dead last with either proposal.

Further evidence that the faculty at Hartnell is entitled to a significant raise comes from the State Chancellors office in a report done on faculty average salaries. Out of the seventy-two

districts in the state the Hartnell faculty is dead last. Again no evidence was presented by the district to refute this claim.

Contrary to the position of the faculty at the bottom, the CEO of Hartnell is at the very top of the same comparative Central 14. While the Association does not begrudge the ranking, equity for faculty is an item that should be considered and if the CEO is at the top then certainly faculty should not be at the bottom. After all what is good for the goose....

FRINGE BENEFITS:

On the topic of fringe benefits the amount requested by the faculty is incorporated into the total of \$335,000. Even with the requests made by the Association the faculty will still need to contribute heavily to the premium for fringe benefits. This has the impact of reducing the actual pay increases made by the Association and continues the low rankings of Hartnell in regard to total compensation.

For the aforementioned reasons the Association believes that the fact finders should find in favor of the Associations stance on all matters.

PANEL DISCUSSION

A. Comparability. (Gov. Code Sec. 3548.2 (4)).

The first prong of the required comparability analysis requires the Panel to examine the "...wages, hours and working conditions of employment of other employees performing similar services." The second prong of the statutory analysis requires the Panel to examine and weigh the data "... with other employees generally in a public school environment."

The District summarizes the data and charts of both parties and contends that, read together, they support the following conclusions:

- 1) The Association's data compares the District to the rest of the Central 14 using 2004-05 salary levels.
- 2) The District's current average salary of \$52,722, even when compared against the 72 California community college districts, with a median average salary, \$69,755. This figure does not include the District salary offer. Still finds Hartnell in the 72nd position out of 72 schools
- 3) The District current classified average salary (submitted by the Association at the Hearing) is \$55,609 when comparable to what other classified employees in the State Community Colleges received in 2005-06, they are in 44th position out of the 72. (The District panel member asserted that the District position is that the averages are about \$64,400 and would be over \$66,000 if the District offer were implemented.)

But the burden to justify a change from the *status quo* on salary is on the union, and here all the data, read as a whole and weighed equally, the panel finds that the comparative data supports the position of the Association for the salary increases.

B. The Consumer Price Index.

The CPI is just one of the statutory elements and needs to be considered in context, both in each year along with the other elements and in an historical setting.

While the Consumer Price index is one measurement utilized in fact-finding the better measure of a districts financial picture comes through the use of the Cost of Living Increase (COLA) as allocated by the State of California based on the deflator price index. The COLA provided to Hartnell College in 2005-06 was 4.23% and the projected COLA for 2006-07 is 5.92% the highest two years in history.

C. Ability to Pay. (Gov Code Sec. 3548.2 (4)).

The Districts inability to pay is without question based on projections made by the District. The District has not taken any efforts at reducing costs over the past years to stay within the revenue received for the given fiscal year.

The Association asserted that the District had established an Insurance fund which is not required by any statute. This fund was in excess of reduced. The District did not challenge the position of the Association regarding this action by the District.

Without the Insurance fund being challenged the Chair accepts the assertion of the Association that these funds are available to the District for their operating activities. This is another form of a "reserve."

The Chair is of the opinion that the District has the ability to meet the fiscal demands of the Association as recommended in this report.

D. The Interests and Welfare of The Public: Govt Code Sec. 3548.2(b) (3)

This factor is discussed in each of the four disputed issues, *infra*.

RECOMMENDATIONS

Based upon the general factual background set forth above, the Panel makes the following recommendations on the disputed issues.

A. Health Insurance Premiums.

1. Position of the Parties

The District final offer to the Association a "cap" of \$1000 per faculty member 04-05; \$1,025 for 05-06; \$1,075 for 06-07. The Mediation sessions resulted in the District offering

\$1,000.00.

The Faculty Association seeks the sum at \$1,035, for 04-05; and full district payment of insurance premiums for future years in a multi-year contract. The Faculty members are currently paying in excess of \$266 per month for their coverage; this will go to \$377 per month.

The Association argues that its members have already underwritten much of the increase in health insurance costs by agreeing to plan modifications and so the District should pay "the full cost" of the present premium. Shifting even *de minimis* premium costs on to workers diminishes take-home pay and adds to the erosion in buying power the union wishes to avoid.

The party's current positions find the Association position equals added costs of \$43,800 more than the District offer.

2. Discussion.

No showing was made the items in dispute, by either party of the criteria set forth in Gov. Code Sec. 3548.2(b) 1 [state and federal laws], or 2 [stipulations of the parties]. The parties argued primarily about 3548.2(b) 3 [interest and welfare of the public], 4 [comparison of Hartnell compensation with other public employers], 5 [the CPI] to 6 [the overall compensation received by the Faculty], and 7 [other facts normally or traditionally considered in labor disputes of this type - here, primarily, the contracts of the District with its other labor organizations].

The growing explosion in the costs of health care (and the insurance to cover it) is increasing annually at a rate 3 to 4 times higher than the increase in the CPI generally. As a result, employers are increasingly asking their employees to bear more of the costs of insurance, either through increased payment of the premiums, narrower coverage, co-pays, deductibles, or some combination thereof.

Applying the relevant criteria to this disputed item, we look primarily to Sec 3548.2 (3) [the interest and welfare of the public]; (4) [comparison of District benefit contributions with

other similar employers]; (6) [the overall compensation received by union members]; and (7) [other facts normally or traditionally considered in labor disputes of this type].

The Chair is persuaded that the criteria of Gov Code Sec. 3548.2 (b) 3, 4 6, and 7 here support the District's position as to employees contributing to the costs of their benefits. In the private sector, the vast majority of workers pay portions of their medical insurance premiums, and an increasing number of public employers have to deal with that reality as well. It is important for employees not only to share in the (ever-increasing) cost of that insurance but to appreciate and understand the impact on their premiums that excessive resort to medical care for even trivial matters may have.

The Association's unit members are on the lower end of the pay and benefits for the comparable districts, this leads the Chair to support the position of the Faculty Association as to the dollar amount of the Districts contribution for the fiscal year in question.

3. Recommendation.

The Association demand for fringe benefits payment of premium for 2004-05 is recommended.

Contributions and district costs for future years are not addressed.

B. Salaries

1. Position of the Parties.

The parties are significantly apart, the dollar difference is \$196,561.

The Association demands a 2.41% increase plus \$950 per cell. The Association position has been limited to the active year of 2004-05 and even with the increase sought by the Association the salaries of the faculty will still rank among the lowest in the state in one of the highest cost of living areas in California. For the future years not addressed by the Association a minimum increase of COLA plus two percent would help slightly to improve the standing of faculty salaries.

The District offer is 3%.

2. Discussion.

The parties at the Hearing agreed that the cost of 1% on the salary scale equaled \$101,000.

Here the criteria of Gov. Code Sec. 3548.2(b) 3, 4, 6 and 7 are applicable.

The CPI, when viewed as a whole and in historical perspective as applied to these parties, justifies the requested increases. The ranking of the Hartnell faculty when compared to the 14 Central Districts and to the 72 districts state wide we find that the Hartnell faculty is on the bottom of the pay being received.

Reasonable minds can (and do) differ over the District's conservative and cautious approach to setting and calculating its funding.

The Chair spoke openly about the manner that the District failed to reduce staff or other expenditures to protect its limited revenue based on the enrollment decline. The District was and is in apposition to reduce expenditures to preserve funds. The position the district takes on the "ability to pay" is based on their revenue projections and fails to address alternatives available to the District to reduce costs. The placing of over \$990,000 in an insurance fund which is not required by statute is available money, in the analysis of the chair.

The Chair believes that salary increases are appropriate particularly in light of the ranking of Hartnell compared to other schools and fiscal alternatives available to the District.

3. Recommendation.

A majority of the panel recommends:

2.41% plus \$900 per cell.

Lecture increase to \$55.32 per hour.

Lab and couns/lib to \$50.90 per hour.

Part time Lecturer to \$49.91 per hour.

Part time Counselors and Librarians to \$41.39 per hour.

C. Contract Duration.

1. Position of the Parties.

The Association argues that a contract effective for only a year, that has already passed would be a ridiculous outcome of a fact-finding. The Association asserts that a contract that covers the period of 2004-07 is the only logical solution to the potential contentious relationship that would result from immediate resumption of bargaining.

2. Discussion.

The parties have been without a contract since June 30, 2004, although the status quo has been maintained. Negotiations have lasted over 2 years. Thus, in the opinion of the panel, a retroactive contract which would expire at the end of this school year, necessitating further negotiations, would not be appropriate.

3. Recommendation.

The Chair recommends the contract duration should be 2004-2005, 2005-06 to 2007-08, with 2 openers for each year by each party.

DATED: July 15, 2006

Joe H. Henderson
Impartial Chair

I concur in part and dissent in part (see below) with the Chair's findings and recommendations;

The following comments are my comments:

While it is stated as a re-opener the practical reality is that it functions as a "me too". That is why this type of language is negotiated in the first place and typically at the urging of the unions.

I strongly disagree with excluding the comments regarding FCMAT. The State Chancellor's office relies on FCMAT as one of its most important tools to deal with districts in financial distress. Legislation was passed recently to insure that FCMAT was available to the Chancellor. FCMAT played an important role in assessing the condition of Compton College. Compton has since ceased to be a college since it lost its accreditation. To say that FCMAT is a pawn of the District is unfounded, unfair, and unproven. The analysis by FCMAT should be considered carefully. It is an impartial analysis in the public interest.

Had the District known at the time of its "last/best" the continued problems with enrollment there is a good chance that the offer might have been a different one. Its "last/best" may be a stretch now.

Salary Comparisons:

It is true that for certain benchmark positions the District ranking is lower however it is also true that for the last 10 years the District has made an effort to improve the overall salary levels for faculty. The cumulative change exceeds the cumulative COLAs and when the value of improved fringe benefits are added the change greatly exceeds the COLA. The aggregate improvement to faculty salaries is more than for management.

Using average salary data is not a good measure. There are variables that affect this such as longevity of faculty, level of education, etc. It is like saying the average depth of the Mississippi is 2 feet. Not much value. A better yardstick is the benchmark positions on the salary schedule. This indicates that the District is not as low as the average would suggest. Based on District data contained in the fact finding report, only 8 faculty are paid between \$44,790-\$50k, 31 are between \$50-\$60k, 26 between \$60-\$70k, 35 between \$70-\$80k, and 7 are over \$80k. With overload earnings some earn in excess of \$90k, \$100k or more.

While the recent COLAs are better than in years past the problem the District faces is a loss of revenue due to declining enrollments. They have already lost \$1.6 million and may lose \$400k on top of that. This point cannot be ignored and is critical to the District's financial

health and ability to pay.

Serving the public interest:

The public's interest will not be well served if the District has to cut back on the quality of the instructional programs or student services to accommodate the faculty demands. Further if the District faces State monitoring or supervision the District's educational status in the community could be greatly harmed.

Salary Recommendations

I strongly disagree with this recommendation given the difficult financial position the District faces. It is not good public policy to spend what you don't have.

DATED: 07/24/06

Michael E. Hill.
District Appointed Fact finder

I dissent from parts ____ and ____ of the Report and attach a separate statement setting forth the reasons for my dissent.

Page 7, paragraph 3

There are no "me too" clauses in other contracts merely a re-opener provision. This paragraph is inaccurate and should not be allowed to remain in the report. Additionally bankruptcy was not proven at the hearing and is a ridiculous position for the district to aver.

DATED:

Alan Frey
Hartnell College Faculty Association
Appointed Fact finder

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